

§ 261.3

37 CFR Ch. II (7–1–06 Edition)

(2) A performance of a sound recording for which the service has previously obtained license from the copyright owner of such sound recording; and

(3) An incidental performance that both: (i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

Performer means the respective independent administrators identified in 17 U.S.C. 114(g)(2)(A) and (B) and the parties identified in 17 U.S.C. 114(g)(2)(C).

Receiving Agent is the agent designated by the Librarian of Congress for the collection of royalty payments made pursuant to this part by Licensees and the distribution of those royalty payments to Designated Agents, and that has been identified as such in § 261.4(b). The Receiving Agent may also be a Designated Agent.

Side channel is a channel on the Web Site of a Commercial Broadcaster or a Non-CPB, Non-Commercial Broadcaster, which channel transmits eligible non-subscription transmissions that are not simultaneously transmitted over-the-air by the Licensee.

Webcaster is a Licensee, other than a Commercial Broadcaster, Non-CPB, Non-Commercial Broadcaster or Business Establishment Service, that makes eligible non-subscription transmissions of digital audio programming over the Internet through a Web Site.

Web Site is a site located on the World Wide Web that can be located by an end user through a principal Uniform Resource Locator (a “URL”), e.g., www.xxxxx.com.

§ 261.3 Royalty fees for public performances of sound recordings and for ephemeral recordings.

(a) For the period October 28, 1998, through December 31, 2002, royalty rates and fees for eligible digital transmissions of sound recordings made pursuant to 17 U.S.C. 114(d)(2), and the making of ephemeral recordings pursuant to 17 U.S.C. 112(e) shall be as follows:

(1) Webcaster and Commercial Broadcaster Performance Royalty. For all Internet transmissions, including simultaneous Internet retransmissions of over-the-air AM or FM radio broadcasts, a Webcaster and a Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.07¢ per performance.

(2) Non-CPB, Non-Commercial Broadcaster Performance Royalty.

(i) For simultaneous Internet retransmissions of over-the-air AM or FM broadcasts by the same radio station, a non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.02¢ per performance.

(ii) For other Internet transmissions, including up to two side channels of programming consistent with the mission of the station, a Non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.02¢ per performance.

(iii) For Internet transmissions on other side channels of programming, a Non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.07¢ per performance.

(b) Estimate of Performance. Until December 31, 2002, a Webcaster, Commercial Broadcaster, or Non-CPB, Non-Commercial Broadcaster may estimate its total number of performances if the actual number is not available. Such estimation shall be based on multiplying the total number of Aggregate Tuning Hours by 15 performances per hour (1 performance per hour in the case of transmissions or retransmissions of radio station programming reasonably classified as news, business, talk or sports, and 12 performances per hour in the case of transmissions or retransmissions of all other radio station programming).

(c) *Webcaster and Broadcaster Ephemeral Recordings Royalty.* For the making of any number of ephemeral recordings to facilitate the Internet transmission of a sound recording, each Webcaster, Commercial Broadcaster, and Non-CPB, Non-Commercial Broadcaster shall pay a section 112(e) royalty equal to 8.8% of their total performance royalty.

(d) *Business Establishment Ephemeral Recordings Royalty.* For the making of any number of ephemeral recordings in the operation of a service pursuant to the Business Establishment exemption contained in 17 U.S.C. 114(d)(1)(C)(iv), a Business Establishment Service shall pay a section 112(e) ephemeral recording royalty equal to ten percent (10%) of the Licensee's annual gross proceeds derived from the use in such service of the musical programs which are attributable to copyrighted recordings. The attribution of gross proceeds to copyrighted recordings may be made on the basis of:

(1) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program,

(2) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

(e) *Minimum fee.* (1) Each Webcaster, Commercial Broadcaster, and Non-CPB, Non-Commercial Broadcaster licensed to make eligible digital transmissions and/or ephemeral recordings pursuant to licenses under 17 U.S.C. 114(f) and/or 17 U.S.C. 112(e) shall pay a minimum fee of \$500 for each calendar year, or part thereof, in which it makes such transmissions or recordings.

(2) Each Business Establishment Service licensed to make ephemeral recordings pursuant to a license under 17 U.S.C. 112(e) shall pay a minimum fee of \$10,000 for each calendar year, or part thereof, in which it makes such recordings.

§ 261.4 Terms for making payment of royalty fees and statements of account.

(a) A Licensee shall make the royalty payments due under § 261.3 to the Receiving Agent. If there are more than

one Designated Agent representing Copyright Owners or Performers entitled to receive any portion of the royalties paid by the Licensee, the Receiving Agent shall apportion the royalty payments among Designated Agents using the information provided by the Licensee pursuant to the regulations governing records of use of performances for the period for which the royalty payment was made. Such apportionment shall be made on a reasonable basis that uses a methodology that values all performances equally and is agreed upon among the Receiving Agent and the Designated Agents. Within 30 days of adoption of a methodology for apportioning royalties among Designated Agents, the Receiving Agent shall provide the Register of Copyrights with a detailed description of that methodology.

(b) Until such time as a new designation is made, SoundExchange, an unincorporated division of the Recording Industry Association of America, Inc., is designated as the Receiving Agent to receive statements of account and royalty payments from Licensees. Until such time as a new designation is made, Royalty Logic, Inc. and SoundExchange are designated as Designated Agents to distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 114(g)(2) from the performance of sound recordings owned by such Copyright Owners.

(c) SoundExchange is the Designated Agent to distribute royalty payments to each Copyright Owner and Performer entitled to receive royalties under 17 U.S.C. 114(g)(2) from the performance of sound recordings owned by such Copyright Owners, except when a Copyright Owner or Performer has notified SoundExchange in writing of an election to receive royalties from a particular Designated Agent. With respect to any royalty payment received by the Receiving Agent from a Licensee, a designation by a Copyright Owner or Performer of a particular Designated Agent must be made no later than thirty days prior to the receipt by the Receiving Agent of that royalty payment.

(d) Commencing September 1, 2002, a Licensee shall make any payments due